IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13037 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRANAYBHAI MANILAL PATEL & 1 - Petitioner(s)
Versus
COOPERATIVE BANK OF AHMEDABAD & 2 - Respondent(s)

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Appearance :
MR SHIRISH JOSHI for Petitioner(s) : 1 - 2.
MR MB GANDHI for Respondent(s) : 1,
MR DEEP VYAS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/06/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri M.B. Gandhi waives service of notice of rule on behalf of respondent no.1. Learned advocate Shri Deep Vyas waives service of notice of rule on behalf of

respondent no.2 and 3. At the joint request of learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. The petitioners herein were guarantors in loan dispersed by the respondent-Bank in favour of principal debtors i.e. respondents no. 2 and 3 herein. Since the amount was not repaid as promised, the Bank instituted a Lavad Suit against the principal debtors as well as the against the petitioners. The suit came to be decreed against all the defendants by the Board of Nominees by its judgement dated 29-10-2002. The principal debtors did not challenge the judgement. The judgement and decree of the Lavad Court has therefore, become final qua respondents no. 2 and 3 herein. The petitioners however, appealed against the same before the Cooperative Tribunal and also prayed for interim injunction against the execution of decree. The Lavad Court by its impugned order though granted stay in favour of the petitioners, imposed a condition that petitioners should

deposit 10% of the suit amount within certain time frame. This order was passed by the Tribunal on 17-6-2005. It is this condition which the petitioners have challenged in this petition.

3. Having heard learned advocates appearing for the parties, I find that there are some disputes raised by the petitioners which would require consideration. Primarily, the case of the petitioners is that petitioners were not served with summons of the Board of Nominees Court. It was on account of these reasons that petitioners could not defend themselves before the Lavad Court. If ultimately, Cooperative Tribunal were to accept this contention and appeal were to be finally heard, the Tribunal would have to remand the proceedings to the Lavad Court to permit the petitioners to defend themselves. Therefore, in the interest of justice and to shorten the litigation, I find it appropriate that petitioners be given an opportunity to defend themselves before the Court of Board of

Nominees. This however, cannot be done unconditionally and the petitioners shall fulfill the condition of depositing of 10% of suit amount as provided by the Tribunal in its order.

4. In the result, the order passed by the Cooperative Tribunal on 17-6-2005 is set aside. The judgement and decree dated 29-10-2002 passed by the Board of Nominees in so far as same against petitioners alone are concerned is set aside. The decree against the rest of the respondents is not disturbed. The proceedings qua petitioners are remanded to Board of Nominees for permitting the petitioners to defend themselves on the condition that petitioners deposit the above-mentioned sum within a period of two months from today before the Bank. Such amount shall be adjusted by Bank upon final outcome of the remand proceedings.

5. With these observations, the petition is disposed of. Rule made absolute accordingly with

no order as to costs.

(Akil Kureshi,J.)

(raghu)